

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AGORA CYBER CHARTER SCHOOL
Employer

and

Case 04-RC-170767

AGORA CYBER EDUCATION
ASSOCIATION, PSEA
Petitioner

ORDER

The Employer's Request for Review of the Acting Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

MARK GASTON PEARCE,

CHAIRMAN

LAUREN McFERRAN,

MEMBER

¹ In denying review, we agree with the Acting Regional Director, for the reasons he stated, that the Employer charter school is not exempt as a political subdivision under Sec. 2(2) of the National Labor Relations Act. We find that the Acting Regional Director correctly applied the test in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971) ("*Hawkins County*"), in finding that the Employer was neither created directly by the state so as to constitute a department or administrative arm of the government nor administered by individuals who are responsible to public officials or the general electorate. We do not, however, rely on the Acting Regional Director's citation to *Chicago Mathematics & Science Academy Charter School*, 359 NLRB 455 (2012), a recess-Board decision. See *NLRB v. Noel Canning*, 1345 S.Ct. 2550 (2014). Instead, we find that the Acting Regional Director's analysis is consistent with *Pennsylvania Virtual Charter School*, 364 NLRB No. 87 (2016). In *Pennsylvania Virtual*, the Board applied the *Hawkins County* test to another Pennsylvania cyber charter school operating pursuant to the same statute, whose creation by individual applicants and governance by its board of trustees exhibit only minor, non-substantive differences from the instant case. In addition, in asserting jurisdiction in *Pennsylvania Virtual*, we rejected arguments that substantially mirror those raised by the Employer in this case.

We likewise find no merit in the Employer's arguments that the Board should, pursuant to Sec. 14(c)(1) of the Act, decline to assert jurisdiction over the charter school, a private, non-profit education corporation, because of its limited impact on interstate commerce, the legislative intent to treat charter schools as public schools, and the state's authority to regulate the labor relations of its public employees. The Board has rejected similar arguments in *Pennsylvania Virtual*, *supra*, slip op. at 9-10, and *Hyde Leadership Charter School*, 364 NLRB No. 88, slip op. at 7-8 (2016).

Dated, Washington, D.C., November 16, 2016

Member Miscimarra, dissenting:

I would grant the Employer's Request for Review and dismiss the petition. The Employer operates a charter school chartered by the Commonwealth of Pennsylvania pursuant to the Charter School Law ("CSL") enacted in 1997. For the reasons fully explained in my dissenting opinions in *Pennsylvania Virtual Charter School*, 364 NLRB No. 87, slip op. at 11-18 (2016) (Member Miscimarra, dissenting), and *Hyde Leadership Charter School*, 364 NLRB No. 88, slip op. at 14-15 (2016) (Member Miscimarra, dissenting), I believe the Board should decline to assert jurisdiction over charter schools generally and in this case.

PHILIP A. MISCIMARRA,

MEMBER